

From: "Brian Hershkowitz" <brian@maximumvaluegroup.com>
To: JBashaw@waterboards.ca.gov
Date: 8/7/2008 8:01:16 PM
Subject: Appeal Request

1. Name, address, telephone number and e-mail address (if available) of the petitioner.

Brian F. Hershkowitz, 1022 Garcia Road, Santa Barbara, California 93103,
(805) 453-6120, brian.hershkowitz@verizon.net

2. The action or inaction of the Regional Water Board being petitioned, including a copy of the action being challenged or any refusal to act, if available. If a copy of the regional board action is not available, the petitioner must explain why it is not included.

The Regional Water Board approved a Waiver of Water Discharge Requirements for a property in the City of Santa Barbara, located at 1303 Ferrelo Road. A copy of the waiver is attached to the email transmittal

3. The date the Regional Water Board acted, refused to act, or was requested to act.

The Waiver was approved on July 11th, 2008

4. A statement of the reasons the action or inaction was inappropriate or improper.

The approval of an onsite septic system on a lot with a slope in excess of 30 degrees, where sewer service is available is not appropriate. There is some question whether the City had asked the Regional Board to waive its requirements, but this has been clarified by an email from the Mayor stating that she and the City are not supporting this matter.

In its waiver decision, the Regional Board accepted as a matter of fact that the developer had no alternative. This is not true. 1) There is a neighbor who has signed an easement allowing for direct access to the sewer. 2) There is a sewer access point within 100 feet that the developer could tie to. 3) They have the alternative not to build on this lot; the lack of direct sewer access was known prior to their purchase.

5. How the petitioner is aggrieved.

The tank and the two dry wells are located less than ten feet from my bedroom. Further both the subject property and my own share access to a canyon with a stream at its base which drains to the Ocean. It makes no sense to allow the environment to be polluted when sewer is available through multiple means.

6. The action the petitioner requests the State Water Board to take.

I would like the decision to allow the waiver stayed, while the State Board schedules this for full consideration, and thus allow myself and the other concerned residents in the community to present a full and detailed case regarding this matter.

Further, as the City of Santa Barbara has no approval process or authority for a septic system of this nature within the City, and the County's clear role is being taken over by the State, we ask that State Water Board act as advocate, first and foremost for the community members who are aggrieved and affected by this matter. We have no one else to protect our rights as the only authority involved is now the State Water Board.

7. A statement of points and authorities for any legal issues raised in the petition, including citations to documents or hearing transcripts that are referred to.

There are, in summary, three key legal issues raised herein:

1. Why is the County of Santa Barbara not making this decision, or at a minimum why are there standards not being applied?
2. Why is a statue, over 40 years old, which limits the dollar amount (to \$1000) which a homeowner might be required to spend to connect to the sewer be used to allow for the standard health and safety requirements be waived for new construction on a previously undeveloped lot?
3. There is a sewer access point within 100 feet, and the interpretation is being made that though close, it does not abut the property. What is the legal basis for this interpretation? An interpretation from IAPMO is attached to this document saying that the property does abut a sewer access point by its standards and definition and hence should be required to connect in that way.

8. A statement that copies of the petition have been sent to the Regional Water Board and to the discharger, if different from the petitioner.

I hereby certify that via email, I have contemporaneously distributed this request for appeal to both the Chairperson of the Regional Board, the Staff Representative, and will mail a true and correct copy of this appeal request to the Discharger.

9. A statement that the issues raised in the petition were presented to the regional board before the regional board acted, or an explanation of why the petitioner could not raise those objections before the regional board.

I hereby certify that all issues herein captioned were raised with the Regional Board through their comment process prior to their decision.

CC: gingersail@aol.com; Rbriggs@waterboards.ca.gov; RLodge@waterboards.ca.gov; chansen@SantaBarbaraCA.gov; MBlum@SantaBarbaraCA.gov; ...



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board

Central Coast Region

895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
Phone (805) 549-3147 • FAX (805) 543-0397
<http://www.waterboards.ca.gov/centralcoast>



Arnold Schwarzenegger
Governor

July 16, 2008

CERTIFIED MAIL 7007 0710 0001 1013 4291

Kevin Goodwin
2000 State Street
Santa Barbara, CA 93105

Dear Mr. Goodwin:

**ADOPTED WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR ONSITE
WASTEWATER DISPOSAL SYSTEM (RESOLUTION R3-2008-0052); 1303
FERRELO ROAD, SANTA BARBARA, (APN: 029-271-028), SANTA BARBARA
COUNTY;**

Enclosed is the Waiver of Waste Discharge Requirements Order No. R3-2008-0052 for 1303 Ferrelo Road, Santa Barbara. Order No. R3-2008-0052 was adopted by the Central Coast Water Board at its July 11, 2008 meeting and is effective immediately.

If you have questions, please contact **Ryan Lodge** at (805) 549-3506 or rlodge@waterboards.ca.gov or Burton Chadwick at (805) 542-4786.

Sincerely,

Roger W. Briggs
Executive Officer

Enclosure: 1. Waiver of Waste Discharge Requirements Order No. R3-2008-0052

cc: Chris Hansen
City of Santa Barbara Building and Safety Dept.
P.O. Box 1990
Santa Barbara, CA 93102-1990

Ronald J. Pike
Pacific Materials Laboratory of Santa Barbara, Inc.
P.O. Box 96
Goleta, CA 93116

California Environmental Protection Agency



Recycled Paper

Hillary Hauser
Heal the Ocean
P.O. Box 90106
Santa Barbara, CA 93190

Brian Hershkowitz
1022 Garcia Road
Santa Barbara, CA 93108

cc: via email w/ attachment

Graham Lyons
Roy Harthorn
Miranda Field
Virginia Ramsey

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 AEROVISTA PLACE, SUITE 101
SAN LUIS OBISPO, CALIFORNIA**

RESOLUTION NO. R3-2008-0052

Waiver of Waste Discharge Requirements

For

**ONSITE DISPOSAL SYSTEM
GOODWIN RESIDENCE, 1303 FERRELO ROAD
SANTA BARBARA
(APN 029-271-028)
Santa Barbara County**

The California Regional Water Quality Control Board, Central Coast Region (hereinafter Water Board) finds that:

1. California Water Code Section 13260(a) requires that any person discharging waste, or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate Regional Water Board a report of the discharge ("report of waste discharge" or "ROWD") or other report containing such information and data as may be required by the Water Board.
2. California Water Code section 13263 authorizes the Water Board to prescribe waste discharge requirements that implement the Water Board's Water Quality Control Plan (Basin Plan).
3. California Water Code Section 13269 authorizes the Water Board to waive the issuance of waste discharge requirements provided that the waiver of waste discharge requirements is consistent with applicable water quality control plans and is in the public interest. In addition, any waiver must be conditional, may not exceed five years in duration, and may be terminated at any time. The waiver must also include monitoring unless the Water Board determines that the discharges do not pose a significant threat to water quality.

BACKGROUND

4. The Central Coast Water Board encourages direct regulation of onsite systems by an authorized and qualified local agency, where such a policy is mutually beneficial. To facilitate direct regulation, the Water Board enters into memoranda of understandings (MOUs) with local agencies that appropriately regulate onsite system siting, design, construction, monitoring and performance in accordance with criteria specified in the Basin Plan. The MOUs provide for local regulation and implementation of the Central Coast Water Board's waiver policy with respect to onsite systems. The City of Santa Barbara (City) owns and operates a wastewater collection and treatment system and therefore does not normally have reason to review onsite systems. The City does not have an MOU with the Water Board. The Water Board staff reviewed the Discharger's report of waste discharge.

5. The subject site consists of a 0.63-acre residential property located in the City of Santa Barbara. The property is within the City of Santa Barbara, but connection to the sewer is not available to the property because the sewer line does not abut the Discharger's property and the Discharger was unable to obtain an easement from neighbors to connect to the sanitary sewer collection system via gravity flow. Both the California Plumbing Code and the Santa Barbara City Ordinances allow the installation of an onsite wastewater disposal system with approval from the authority having jurisdiction. The property owner, Kevin Goodwin (hereafter Discharger), applied for waste discharge requirements for a conventional onsite wastewater disposal system.
6. The Basin Plan designates the beneficial uses of waters within the Region, specifies the water quality objectives to protect the beneficial uses, establishes prohibitions, and establishes implementation policies to implement the water quality objectives. Pursuant to Chapter 2 of the Basin Plan, present and potential beneficial uses of groundwater (both shallow and deeper water-bearing zones) underlying the Property include domestic and municipal water supply, agricultural water supply, and industrial water supply. The Basin Plan incorporates the state's drinking water standards adopted by the California Department of Public Health as water quality objectives.
7. An application containing a Report of Waste Discharge was submitted to the Water Board by the Discharger on March 27, 2008. The onsite disposal system design was prepared by Ronald J. Pike, Pacific Materials Laboratory and is dated March 17, 2008.
8. The Executive Officer notified the Discharger of the proposed Waiver on May 29, 2008.
9. The Water Board has considered the design information provided in the application and has required the Discharger, as a condition of this waiver, to comply with the Basin Plan requirements for onsite disposal systems.
10. Individual subsurface disposal systems for domestic residences are categorically exempt from the California Environmental Quality Act as set forth in California Code of Regulations, Title 14, Section 15303.
11. The Water Board finds that if the onsite disposal system is properly operated and maintained in accordance with the conditions of this Resolution this waiver of waste discharge requirements is in the public interest and consistent with the Basin Plan.
12. This waiver of waste discharge requirements is in the public interest because:
 - a) The Waiver requires the discharger to observe reasonable practices to minimize the deleterious effects of the discharge;
 - b) This Waiver requires the discharger to implement feasible treatment methods to control the waste constituents in the discharge; and
 - c) This Waiver includes conditions that will adequately protect beneficial uses while allowing the Water Board to utilize more of its resources to conduct field oversight, public outreach and, where necessary, enforcement.
13. The proposed onsite disposal system must comply with the Basin Plan requirements to implement design and operational controls, maintenance activities, and regular monitoring to prevent water quality impacts.

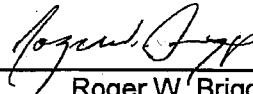
14. The conditions of this waiver are consistent with the Basin Plan because it :
 - a) Prohibits pollution, contamination or nuisance;
 - b) Requires monitoring and compliance with applicable Basin Plan prohibitions;
 - c) Requires the Discharger to grant access to Water Board staff to perform inspections:
and
 - d) Requires the onsite disposal system to comply with the Basin Plan's criteria for onsite systems.
15. Pursuant to California Water Code Section 13269, this action waiving the issuance of waste discharge requirements for this on site domestic wastewater disposal system: (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Water Board from administering enforcement remedies (including civil liability) pursuant to the California Water Code.
16. Operation of the proposed onsite disposal system consistent with this Resolution is not anticipated to degrade groundwater and is consistent with State Water Resources Control Board Resolution 68-16 ("Policy for Maintenance of the High Quality of Waters of the State"). State Water Board Resolution No. 68-16 requires the Regional Board to maintain the high quality of waters of the state unless the Regional Board determines that some degradation of waters is consistent with maximum benefit to the people of the state, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than set forth in the Basin Plans. The Regional Boards must ensure that waste discharge requirements will result in best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and the highest water quality is maintained. In short, the degradation may not violate water quality objectives and must not unreasonably affect existing and designated beneficial uses. Operation of the proposed system is consistent with Resolution 68-16 because it is consistent with the Basin Plan standards for onsite wastewater treatment and disposal.
17. The monitoring and reporting requirements of this Resolution are imposed pursuant to California Water Code Section 13267. The monitoring and reporting are necessary to ensure compliance with the conditions of this Resolution and to verify the adequacy and effectiveness of the conditions.
18. The Water Board provided an opportunity for a public hearing on July 11, 2008, in Watsonville, California, and considered all comments and evidence concerning this matter.
20. Any person affected by this action of the Water Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The State Board must receive the petition within 30 days of the date of this Resolution. Copies of the law and regulations applicable to filing petitions will be provided upon request.

THEREFORE BE IT RESOLVED:

1. In accordance with California Water Code Sections 13267 and 13269, waste discharge requirements for the proposed on site domestic wastewater disposal system are hereby waived subject to the following conditions:
 - a) The onsite disposal system shall be installed under the supervision of the designer pursuant to the March 17, 2008 Onsite Wastewater System Design by Ronald J. Pike, Pacific Materials Laboratory, and be operated and maintained in accordance with Basin Plan criteria and manufacturer specifications.
 - b) The Discharger shall comply with Basin Plan criteria for onsite disposal systems.
 - c) The Discharger and future property owners shall be subject to the requirements of the Basin Plan.
 - d) The Discharger shall inspect the sewage disposal system every two years for solids buildup and be pumped as required by a licensed septic tank contractor.
 - e) Use of the individual sewage disposal system shall not create a condition of pollution, contamination, or condition of nuisance, as defined by California Water Code Section 13050.
 - f) Only domestic wastewater shall be discharged to the individual sewage disposal system.
 - g) The Discharger shall immediately notify the Water Board of any proposed change(s) in discharge volume, nature, or location.
 - h) If the Discharger transfers the property, the Discharger shall notify the new owner of this Waiver of Waste Discharge Requirements and shall notify the Water Board of the transfer within 30 days of transfer.
 - i) The Discharger shall immediately notify the Water Board of any discharges threatening water quality or public health.
 - j) The Discharger shall allow the Water Board to inspect the onsite disposal system at any time to evaluate compliance with this Waiver.
 - k) Operation of the sewage disposal system shall not result in the daylighting (surfacing) of effluent from the disposal area or other portions of the system.
 - l) The Discharger and future property owners shall provide copies, upon request, of all monitoring and maintenance records to the Water Board.
2. This Waiver shall not create a vested right to discharge and all such discharges shall be considered a privilege, as provided for in California Water Code Section 13263.
3. The Executive Officer or Water Board may terminate the applicability of the Waiver described herein at any time.
4. This Waiver shall become effective on **July 11, 2008**, and shall expire on **July 11, 2013**.

5. The Discharger may be subject to enforcement actions for violations of this Waiver pursuant to Division 7 of the California Water Code. As provided in California Water Code Section 13350(a), the Discharger may be civilly liable if in violation of a waiver condition, or causes waste to be deposited where it is discharged, into the waters of the State and creates a condition of pollution or nuisance.

I, Roger W. Briggs, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Coast Region, on July 11, 2008.



Roger W. Briggs
Executive Officer

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Subject: Response to Request for Clarification - 713.4 Sewer (2006)

From: Alma Ramos <alma.ramos@iapmo.org>

Date: Mon, 21 Jul 2008 11:09:58 -0700

To: Roy Harthorn <rwh@codeconsult.com>

CC: Adam Muliawan <adam.muliawan@iapmo.org>, Lynne Simnick <Lynne.Simnick@iapmo.org>, Bob Shepherd <bob.shepherd@iapmo.org>, Arturo Robles <Arturo.Robles@iapmo.org>

Dear Roy,

This is in response to your request for clarification on the Uniform Plumbing Code regarding Sewers. The question (s) considered was (were):

Is the public sewer at the intersection of "F" and "G" streets shown in the attached sketch an "available sewer" under the 2006 UPC?

The 2008 UPC Answers & Analysis Committee answered Item #08-66 as follows:

Yes, section 713.4 states that if a sewer is within 200 feet of a building it is considered available. Using the scale provide, the proposed structure is around 100 feet from the sanitary sewer main which is well with 200 feet maximum distance for the main to be considered "available".

Considering this issue were Chairman, John J. Roth, City of Houston, TX (Retired); Bob Adler, City of San Jose, CA; Steven Nastruz, Seattle/King County, Seattle, WA; Bruce Pfeiffer, City of Topeka, KS; Ed Schoenfeld, City of Salt Lake City, UT; G.F. "Jed" Scheuermann, City of Portland, OR; K. Anthony Wilcockson, City of Walnut Creek, CA (Retired); and Ronald George, City of Monroe, MI. Thank you for your patience and interest in clarifying this matter.

Sincerely,

John Roth

Chairman, UPC Answers & Analysis Committee

By:

Lynne Simnick

UPC Answers & Analysis Committee Staff Liaison

IAPMO Group World Headquarters

5001 E. Philadelphia Street

Ontario, CA 91761-2816

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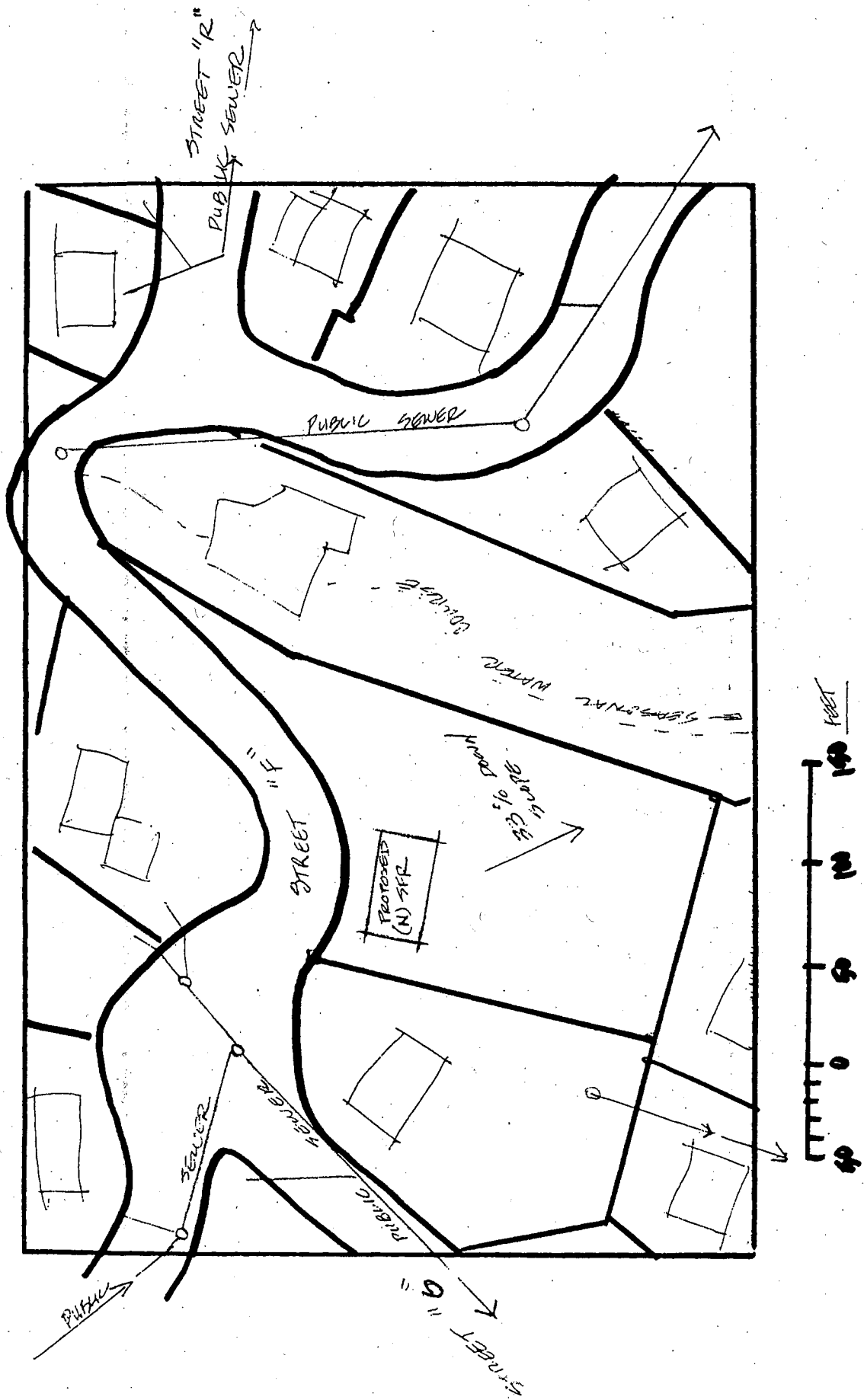
Facsimile: (909) 472-4246

Email: <lynne.simnick@iapmo.org>

Web Address: <www.iapmo.org>

* View many clarification questions and answers published in our Answers and Analysis publications (plumbing and mechanical). These documents are available for purchase NOW! Visit our always open online bookstore or give us a call at 1-800-85-IAPMO (1-800-854-2766)*

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KEY: Street F = Ferrel St.
 " G = Garcia Rd.
 " R = Rubio Rd.